

## Message Text

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ACTION ARA-14

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R 071707Z SEP 78  
FM AMEMBASSY TEGUCIGALPA  
TO SECSTATE WASHDC 1473

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E.O. 11652: NA  
TAGS: EFIN, BDIS, HO  
SUBJ: DEL WEBB CLAIM

REF: STATE 213385

1. SUMMARY. DURING THE VISIT OF JOHN BYRNE, DEL WEBB VICE PRESIDENT, AUGUST 23-25 EMBOFF DISCUSSED WITH HIM GOH LATEST RESPONSES, REMAINING HURDLES AND OPTIONS FOR RESOLUTION OF THE COMPANY'S \$3.7 MILLION CLAIM. SPECIAL EFFORT WAS MADE TO INFLUENCE HIM TOWARD MORE POSITIVE ACTIONS AND AWAY FROM CONGRESSIONAL INTERVENTION. BYRNE WAS REMINDED THAT THE GOH PATIENTLY REVIEWED THE CLAIM AT THE COMPANY'S REQUEST FOUR TIMES SINCE 1972. HE WAS ADVISED, ALSO, THAT HONDURAS' WILLINGNESS TO REPEAT THESE REVIEWS MADE LEGISLATIVE ACTION TO RESTRICT AID TO THE COUNTRY APPEAR PREMATURE, PARTICULARLY SINCE DEL WEBB HAD NOT EXHAUSTED LEGAL REMEDIES. LIMITS ON EMBASSY AND STATE DEPARTMENT INTERVENTION PRIOR TO RELIANCE ON THESE LOCAL REMEDIES WERE EXPLAINED. EMBOFF ALSO REFERRED TO THE DEPARTMENT'S LEGAL STAFF ANALYSIS OF THE CLAIM WHICH REVEALED THAT THE COMPANY ERRONEOUSLY ARGUES IN TERMS OF COMMON LAW AND PRECEDENT, WHEREAS IN HONDURAS PRACTICE CONTRACTUAL, STATUTORY OR OTHER SPECIFIC PROVISIONS MUST BE CITED. BYRNE WAS CORDIALLY RECEIVED BY THE MINISTERS OF PUBLIC WORKS AND FINANCE. HE SAID VERY LITTLE ABOUT THE CLAIM AND SEEMED TO ACQUIESCE IN THE RECENT GOH RESPONSE THAT IT

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WAS WITHOUT LEGAL BASIS. BOTH MINISTERS SAID DEL WEBB WOULD BE WELCOME TO COMPETE FOR FUTURE CONTRACTS PROVIDED THAT IT CONSIDERED ITS CLAIM RESOLVED. IN A FURTHER MEETING WITH THE MINISTER OF PUBLIC WORKS TO RECEIVE A LETTER ATTESTING TO THIS, BYRNE ACCEPTED THE LETTER AND PROCEEDED TO SAY HE WOULD PURSUE THE CASE BY ALL AVAILABLE MEANS. THE ABOUT-FACE MAY HAVE BEEN STAGED FOR THE BENEFIT OF ARIZONA REPUBLIC EDITOR, HAROLD MILKS, WHO ACCOM-

PANIED BYRNE AT THIS FINAL MEETING. BYRNE ALSO TOLD THE EMBOFF THAT HE INTENDS TO MAKE FULL USE OF THE COMPANY'S CONGRESSIONAL SUPPORT IN CONTINUING TO PURSUE THE CASE. THE EMBASSY SUGGESTS THE DEPARTMENT CONSIDER ATTEMPTING TO HEAD OFF COUNTERPRODUCTIVE LEGISLATIVE INTERVENTION BY PREPARING FOLLOW-UP LETTERS TO INTERESTED CONGRESSMEN REVIEWING GOH REPEATED RECONSIDERATION OF THE CLAIM, THE LATEST FORMAL RESPONSE AND THE WEAK LEGAL BASIS FOR THE CLAIM AS PRESENTED.

2. JOHN BYRNE, DEL WEBB'S REPRESENTATIVE ON ITS \$3.7 MILLION CLAIM FOR ALLEGED COST OVERRUNS ON TELA-LA CEIBA HIGHWAY CONTRACTS VISITED TEGUCIGALPA AUGUST 23 TO 25 TO CALL ON APPROPRIATE MINISTERS AND THE COMPANY'S LOCAL ATTORNEY. THE EMBASSY HAD SUGGESTED THAT HE POSTPONE THE VISIT DUE TO THE RECENT CHANGE OF GOH LEADERSHIP AND PREOCCUPATION OF THE ATTORNEY WITH THE VISIT OF THE MEDIATOR IN HONDURAS' BORDER DISPUTE WITH EL SALVADOR. BYRNE PERSISTED IN COMING AT THIS TIME, PERHAPS, TO GAIN SOME PERCEIVED BENEFIT FROM THE COINCIDING VISIT OF ARIZONA REPUBLIC EDITOR, HAROLD MILKS. EMBASSY ECONOFF MADE APPOINTMENTS FOR BYRNE WITH MINISTERS OF FINANCE PORFIRIO ZAVALA AND PUBLIC WORKS FLORES THERESIN, MADE HOTEL RESERVATIONS, MET THEM AT THE AIRPORT AND ACCOMPANIED THEM TO APPOINTMENTS.

3. IN AN EFFORT TO GUIDE DEL WEBB ACTIONS ONTO A CONSTRUCTIVE PATH, THE ECONOFF PREPARED OPTIONS AND TALKING POINTS PAPER FOR EMBASSY USE IN MEETINGS WITH BYRNE. THE NEED FOR GUIDANCE LIMITED OFFICIAL USE

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ARISES FROM THE UNWELCOME MANNER AND METHODS BY WHICH THE COMPANY HAS ATTEMPTED TO SECURE SETTLEMENT DURING PAST 6 YEARS. IT HAS NOT SOUGHT RELIEF IN ACCORDANCE WITH TERMS OF ITS CONTRACTS AND HAS ATTEMPTED MOBILIZE EMBASSY, STATE DEPARTMENT, CONGRESSIONAL AND OTHER SOURCES TO APPLY PRESSURE ON GOH. IN ATTEMPT TO SECURE CONGRESSIONAL CUT-OFF OF AID TO HONDURAS IT HAS ALSO CONVEYED TO CONGRESSMEN IMPRESSION THAT GOH UNWILLING TO SERIOUSLY CONSIDER THE CLAIM. TO CONTRARY, GOH PATIENTLY RECONSIDERED THE CLAIM FOUR TIMES IN PAST SIX YEARS. DEL WEBB LOBBYING ON HILL CONTINUED INTO AUGUST 1978 EVEN WHEN IT WAS APPARENT FROM GOH COMPREHENSIVE RESPONSES OF JUNE AND JULY THAT LATTER HAD THE CLAIM UNDER ACTIVE CONSIDERATION THROUGH FIRST HALF OF THIS YEAR AND WAS, THEREFORE, RESPONSIVE.

4. EMBASSY ADVISED BYRNE ON STATUS OF CASE AND OPTIONS ALONG FOLLOWING LINES:

A. AS COURTESY, COMPANY MIGHT WISH TO ADDRESS LETTERS TO MINISTERS OF FINANCE AND PUBLIC WORKS ACKNOWLEDGING RECEIPT OF GOH WRITTEN DECISION AND EXPRESSING APPRECIATION FOR RECONSIDERATION.

B. DEPARTMENT'S ANALYSIS OF DEL WEBB CLAIM REVEALS IT IS

BASED ON US LEGAL PRACTICE (COMMON LAW AND PRECEDENT). UNDER HONDURAN PRACTICE SUCH A CLAIM WOULD NEED TO BE BASED ON LOCAL CONTRACTS, STATUTES, OR SPECIFIC HONDURAN LAW, AS INDICATED BY GOH RESPONSE. TO PURSUE IT FURTHER, DEL WEBB MIGHT NEED TO REVISE ITS CLAIM, BASING IT ON LOCAL LAW.

C. GOH HAS RECONSIDERED CLAIM ADMINISTRATIVELY FOUR TIMES ALWAYS CONCLUDING IT IS WITHOUT LEGAL BASIS. FURTHER SUBMISSIONS FOR ADMINISTRATIVE REVIEW WOULD APPEAR UNFRUITFUL UNLESS LEGAL ARGUMENTS REVISED (4.B) OR OTHER BASIS, SUCH AS EQUITY USED.

D. UNTIL DEL WEBB EXHAUSTS LOCAL REMEDIES, (INCLUDING JUDICIAL) USG INTERVENTION (MORE VIGOROUS REPRESENTATIONS, ESPOUSAL, HICKENLOOPER, ETC) WOULD BE LIMITED. THE COMPANY MIGHT LIMITED OFFICIAL USE

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WISH TO CONSIDER LITIGATION. THEIR ATTORNEY SUGGESTS PROMPT ACTION ON INJUNCTION (RECURSO DE AMPARO) AGAINST LATEST GOH

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-----004617 072059Z /21

R 071730Z SEP 78  
FM AMEMBASSY TEGUCIGALPA  
TO SECSTATE WASHDC 1474

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RULING, AS FIRST STEP. OTHERWISE, FURTHER ACTION COULD BE DISALLOWED.

E. CONSIDER SEEKING INDEPENDENT OPINION. INTER-AMERICAN COMMERCIAL ARBITRATION COMMISSION (ICAC) AND WORLD BANK'S INTERNATIONAL CENTER FOR SETTLEMENT OF INVESTMENT DISPUTES WERE MENTIONED AS POSSIBLE SOURCES.

5. IN FIRST CALL ON PUBLIC WORKS MINISTER FLORES THERESIN, BYRNE SAID NOTHING ABOUT PURSUING CLAIM AND SEEMED RECONCILED TO THE GOH ADVERSE RESOLUTION. DISCUSSION RANGED FROM NOSTALGIC EXCHANGES ON ITALY, WHERE BOTH HAD MILITARY POSTS, TO PROSPECTS FOR NEW CONSTRUCTION IN HONDURAS. FLORES THEN VOLUNTEERED THAT IF DEL WEBB ACCEPTED GOH RECENT RESOLUTION OF CLAIM, HE WOULD HAVE MINISTRY'S LEGAL STAFF PREPARE LETTER OF "CLEAN BILL", ACKNOWLEDGING THE COMPANY WAS WELCOME TO BID ON NEW PROJECTS. BYRNE EXPRESSED WILLINGNESS TO HAVE SUCH A LETTER AND FLORES SAID IT WOULD BE READY AUGUST 25. ONLY OTHER IMPORTANT POINT MADE BY FLORES WAS THAT IF DEL WEBB WISHED TO REBUT GOH RESOLUTION, 'RECURSO DE AMPARO' (SEE PARA 4.D) SHOULD BE LODGED WITH JUDICIARY PRIOR TO LAPSE OF PERIOD (UNKNOWN DURATION) AFTER WHICH APPEAL BARRED.

6. BYRNE NEXT MET WITH FINANCE MINISTER ZAVALA. AGAIN, HE EXPRESSED NO INTENTION OF PURSUING CLAIM INDICATING, THEREBY, ACQUIESCENCE IN GOH DECISION. HE MENTIONED COMPANY'S DESIRE TO AGAIN LIMITED OFFICIAL USE

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HAVE CONTRACTS IN HONDURAS, AND ZAVALA RESPONDED THAT IF HE RAISED MATTER WITH THERESIN, A LETTER OF "CLEAN BILL" MIGHT BE FORTHCOMING. THE MINISTER POINTED OUT THAT DEL WEBB WOULD BE ABLE TO BID ONLY IF IT HAD NO CLAIM PENDING WITH HONDURAS. EMBOFF, AT BYRNES' REQUEST (DUE LANGUAGE BARRIER), EXPLAINED THAT THIS SAME GROUND WAS COVERED WITH MINISTER OF PUBLIC WORKS AND THAT LATTER OFFERED SUCH A LETTER. AFTER ONLY FIVE MINUTES DISCUSSION, WHICH COULD ONLY BE CHARACTERIZED AS FRIENDLY, BYRNE MOVED TO END THE MEETING AS IF HE HAD NOTHING FURTHER TO SAY. EMBOFF COMMENTED TO BYRNE WHILE RETURNING FROM MINISTRY THAT ZAVALA HAD BEEN PARTICULARLY FRIENDLY AND JOVIAL. TO EMBOFF'S SURPRISE, BYRNE LATER TERMED ZAVALA AS ABUSIVE IN THIS MEETING.

7. MR. BYRNE MET AGAIN WITH MINISTER FLORES AUGUST 25 TO INTRODUCE HAROLD MILKS. PRIOR TO THE MINISTER'S HANDLING LETTER OF "CLEAN BILL" TO BYRNE AT THIS MEETING, CONVERSATION CONSISTED ONLY OF EXCHANGES OF PLEASANTRIES UNRELATED TO THE CLAIM. BYRNE THEN SAID DEL WEBB INTENDED TO CONTINUE TO PURSUE THE CLAIM BY WHATEVER MEANS, INCLUDING LITIGATION. PERHPAS BECAUSE THIS CLOSING COMMENT WAS SO FAR OUT OF CONFORMANCE WITH TREND OF PRECEDING DISCUSSION AND ACTION (APPARENT ACQUIESCENCE IN GOH DECISION AND PROVISION OF "CLEAN BILL") THE MINISTER DID NOT REACT, AND THE MEETING ENDED. DURING RETURN TO HOTEL, AND STILL IN PRESENCE OF MR. MILKS, BYRNE REPEATED INTENTIONS TO PURSUE THE CLAIM, ADDING THAT FULL WEIGHT CONGRESSIONAL CONTACTS WOULD BE BROUGHT TO BEAR. HE ALSO REPEATED HIS ALLEGATION THAT MINISTER ZAVALA WAS RUDE AND ABUSIVE.

8. COMMENT: THE DEL WEBB CLAIM HAS TAKEN AN INORDINATE AMOUNT OF TIME OF USG AND GOH PERSONNEL AND HAS TENDED TO ERODE THE IMAGE OF US BUSINESSIN HONDURAS. IT IMPACTS ADVERSELY ON US-HON-

DURAN RELEATIONS AND, RECENTLY, ON US EXECUTIVE-LEGISLATIVE  
BRANCH RELEATIONS. THE SITUATION AS DESCRIBED HEREIN AND IN  
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BACKGROUND AND ANALYSIS PAPERS PREPARED BY THE DEPARTMENT CON-  
TAIN INGREDIENTS WHICH, IF PROPERLY MIXED AND USED, COULD HELP  
TO PLACE DEL WEBB ON A CONSTRUCTIVE PATH AND/OR BRING THE CASE  
TO A CLOSE. THEY ALSO COULD BE USED TO PROPERLY INFORM INTERESTED  
CONGRESSMEN AND THEIR STAFFS. THE DEPARTMENT MIGHT WISH TO PREPARE  
FOLLOW-UP RESPONSES TO THE SEVERAL CONGRESSIONAL INQUIRIES IT HAS  
RECEIVED. SUCH LETTERS MIGHT POINT OUT, INTER ALIA, THAT GOH HAS FOR  
THE FOURTH TIME CONISERED THE CLAIM AND AGAIN CONCLUDED THAT IT HAS  
BEEN RESPONSIVE; THAT IN THE DEPARTMENT'S ANALYSIS OF HONDURAS LAW  
THE CLAIM AS PRESENTED IS DEFECTIVE; AND THAT DEL WEBB HAS YET  
TO EXHAUST LOCAL REMEDIES BEFORE THE US CAN INTERVENE MORE SUB-  
STANTIALY.

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## Message Attributes

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